

INDEX

	Page
Motion for Leave to File Petitions for Rehearing....	1
Petition for Rehearing of Order Denying Motion for Leave to Intervene.....	7
Reasons for Granting Rehearing and Permitting Intervention	7
Petition for Rehearing of the Case on the Merits....	13
Reasons for Granting Rehearing	13
Conclusion	20
Certificate of Counsel	20

CITATIONS

CASES:

Albrecht v. N.L.R.B., 7 Cir., 1950, 181 F. 2d 652....	8
American Newspaper Publishers Ass'n v. N.L.R.B., 7 Cir., 1951, 190 F. 2d 45, certiorari denied, 344 U.S. 812	8
Jacobsen v. N.L.R.B., 3 Cir., 1941, 120 F. 2d 96....	8
Morris v. S.E.C., 2-Cir., 1941, 116 F. 2d 896	8
Tatum v. Cardillo, S.D.N.Y. 1951, 11 F.R.D. 585....	8
United States v. Terminal Ass'n of St. Louis, 1915, 236 U.S. 194	3, 7

STATUTES:

Labor Management Relations Act of 1947 (29 U.S.C. 141, et seq.)	
Section 302	15
Section 302(a)	15
Section 302(b)	15
Section 302(c)(5)(B)	4, 9, 13
Section 302(d)	15
National Labor Relations Act (29 U.S.C. 151, et seq.)	
Section 8(a)	4
Section 8(b)	18
Section 8(b)(2)	18

CONGRESSIONAL MATERIAL:

Page

Hearings before the Senate Committee on Education
and Labor, on S. 2926, 73rd Cong., 2d Sess.:

p. 682, reprinted 1 Leg. His. N.L.R.A. 1935,

p. 720 17

p. 902, reprinted 1 Leg. His. N.L.R.A. 1935,

p. 940 17

H. Rept. No. 245, on H.R. 3020, 80th Cong., 1st Sess.,

p. 21, reprinted, 1 Leg. His. L.M.R.A. 1947, p. 321 18

Senate Committee Comparison of S. 1958, 74th

Cong., 1st Sess., with S. 2926, 73rd Cong., 2d Sess.,

as reported, p. 19, reprinted 1 Leg. His. N.L.R.A.

1935, p. 1342 16

S. Rept. No. 573, on S. 1958, 74th Cong., 1st Sess.,

p. 6, reprinted 2 Leg. His. N.L.R.A. 1935, p. 2305 16

S. Rept. No. 105, on S. 1126, 80th Cong., 1st Sess.,

p. 21, reprinted 1 Leg. His. L.M.R.A. 1947, p. 427 18

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYES INTERNATIONAL UNION, Local No. 11,
AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

Motion of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America,
AFL-CIO, et al., for Leave to File Petitions for
Rehearing of the Order Denying Motion for Leave
to Intervene and for Rehearing of the Case on the
Merits

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Warehouse-

men Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Joint Council of Drivers, No. 37, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Teamsters Building Association, Inc., a nonprofit corporation; Oregon Teamsters' Security Plan Office; William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each moves this Honorable Court for leave to file the two annexed petitions for rehearing. One of these petitions seeks a rehearing of the order of this Court entered March 25, 1957 denying the motion of the International Brotherhood of Teamsters, etc., *et al.*, for leave to intervene and the other seeks a rehearing of the order of this Court entered May 6, 1957 reversing the judgment below and remanding the case to the Court of Appeals for the District of Columbia Circuit for remand to the National Labor Relations Board for further proceedings. Rehearing of the order denying the motion for leave to intervene is sought out of time because the order of May 6, 1957, disposes of the case on the merits in a manner which deprives the applicants for intervention of rights when they have never been accorded a hearing in this Court and this Court has not heard anyone else who sought to protect their rights.

This is the first time, so far as we have been able to ascertain, that this Court has ever deprived a person of a judgment or order in his favor without affording him, or someone representing his interest, the opportunity to be heard. This Court has heretofore recognized that the right to be heard required that parties be admitted as original intervenors in this Court where

by a combination of circumstances the case in this Court would affect their substantive rights although they had not been parties in the court below. *United States v. Terminal Association of St. Louis*, 1915, 236 U.S. 194, 199.

The principle that no court can constitutionally deprive a party of his rights without affording him an opportunity to be heard is so well established that we can find no basis for the denial of the petition to intervene unless it was based on either the assumption that the National Labor Relations Board would defend its order in such a manner as to represent fully the interests of the applicants for intervention or the assumption that this Court's disposition of the case on the merits would not adversely affect the applicants.

Not until this Court on May 6, 1957 handed down its decision of this case on the merits was it established that neither of these two assumptions was justified in this case. Although it was apparent at the time of the oral argument herein that the National Labor Relations Board could in no sense be regarded as adequately representing the interests of the applicants for intervention, it was still possible that the Court had in mind a disposition of the case which would have preserved the rights of the applicants for intervention.

In refraining from filing a petition for rehearing of the order denying intervention within time we bowed to the view that this Court in its wisdom had before it considerations unknown to us which justified the denial. The subsequent course of events leads us to believe that some inadvertence must have occurred and that there was no proper basis for denying

intervention. For the decision of this Court on the merits makes it apparent that applicants have been denied rights without any hearing.

The questions during oral argument herein, which various members of this Court addressed to counsel for the National Labor Relations Board inquiring if there was anyone before the Court arguing in opposition to the position taken by the petitioner with respect to the power of the Board, strongly suggests that at least some members of this Court denied the motion to intervene without a full appreciation of the absence of any representation of the applicants' position.

The extent to which the decision of this Court deprives the applicants of intervention of rights without a hearing was also not possible of ascertainment until the decision on the merits. The decision of this Court sets aside both a judicial decree and an administrative order which had terminated administrative proceedings brought against the applicants for intervention by a complete dismissal and which had further adjudicated that none of the applicants for intervention would be subject to Section 8(a) of the National Labor Relations Act with respect to their noncommercial activities.

The opinion of this Court takes no notice of the fact that Section 302(c)(5)(B) of the Labor Management Relations Act (29 U.S.C. 186(c)(5)(B)) removes some 10 of the 23 employees here involved from the jurisdiction of the National Labor Relations Board, because they have been selected by representatives of employers and representatives of employees as "neu-

tral" persons to assist in the administration of health and welfare funds (R. 87a-88a, 230a-231a, Tr. 46, 56, 105-108, 121-124, 362, G.C. Exh. No. 2). They are not employed by labor organizations but rather by the trustees of the Security Plan or by William C. Earhart, the administrator appointed by the trustees. Both the Security Plan and William C. Earhart are applicants for intervention herein. The Board dismissed on the broader ground of its policy against assuming jurisdiction over nonprofit organizations without ever passing on the issues of jurisdiction raised by the Security Plan and Earhart (R. 13a, 18a, 21a; Transcript of Oral Argument before Board, pp 14, 22). The opinion of this Court unless clarified may be construed by the Board and the courts as requiring a mandatory exercise of jurisdiction over the Security Plan and Earhart although the issues of jurisdiction as to them were never decided by the Board and they had no hearing before this or any other court on this issue.

Applicants believe that a petition for rehearing out of time should be permitted because they, by their petition to intervene timely filed herein, took all the appropriate steps proper to protect their rights prior to the decision of this Court on the merits.

The second petition for rehearing which is annexed hereto, namely the petition for rehearing of the case on the merits, is timely submitted. Leave to file it is necessary solely because the applicants for intervention do not have the status of parties to this suit.

The foregoing reasons for granting leave to file out of time the petition for rehearing of the denial of

intervention, equally support the application for leave to file a petition for rehearing of the case on the merits.

Respectfully submitted,

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Petition for Rehearing of Order Denying Motion For Leave to Intervene

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, C.I.O., its affiliated organizations involved herein, Oregon Teamsters' Security Plan Office, and William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each respectfully petitions that this Court grant rehearing of its order of March 25, 1957, denying the motion of such petitioners for leave to intervene herein and enter an order granting leave to intervene herein for the purpose of filing the annexed petition for rehearing of the case on the merits.

REASONS FOR GRANTING REHEARING AND PERMITTING INTERVENTION

Under the applicable precedent of this Court applicants were entitled as of right to intervene herein if the parties before the Court did not adequately represent their interests and the judgment entered would adversely affect them. *United States v. Terminal Association of St. Louis*, 1915, 236 U.S. 194, 199. Both from the briefs filed herein by the parties before the Court and from the positions asserted at oral argument herein it would be impossible to maintain that any party before the Court adequately represented the interests of the applicants. Likewise a consideration of the effect of the judgment of this Court leaves no doubt the applicants for intervention have had their legal rights adjudicated in this case.

The effect of the denial of intervention in this case upon the development of administrative law is far reaching. The denial in effect stands as a precedent

for the proposition that a respondent before an administrative agency may properly be deprived of any day in court when an order in his favor is being contested, even though the administrative agency for some reason has decided to abandon in whole or in part the decision rendered in favor of the respondent. The courts have heretofore held that even where the administrative agency was vigorously and fully defending its order of dismissal, the successful respondent should be permitted to intervene in the courts to support the dismissal. *Charles Albrecht v. N.L.R.B.*, 7 Cir., 1950, 181 F. 2d 652, 653; *American Newspaper Publishers Association v. N.L.R.B.*, 7 Cir., 1951, 190 F. 2d 45, 49, certiorari denied, 344 U.S. 812; *Jacobsen v. N.L.R.B.*, 3 Cir., 1941, 120 F. 2d 96, 97. Cf. *Morris v. S.E.C.*, 2 Cir., 1941, 116 F. 2d 896, 897-898; *Tatum v. Cardillo*, S.D.N.Y., 1951, 11 F.R.D. 585. There would seem to be no reason that the successful respondent should not have the same right to intervene and be heard in this Court where the order of dismissal in his favor has been sustained by the Court of Appeals, as he has to intervene and be heard in the Court of Appeals.

The extent to which the decision of this Court upon the merits forecloses rights of the applicants for intervention where they have never been afforded a hearing is most obvious with respect to the ten employees who serve as neutral persons assisting the trustees who administer the health and welfare plans. These employees actually decide claims against the health and welfare funds (R. 230a, 231a, Tr. 121-123, 362). The opinion of this Court might be construed by the National Labor Relations Board or the lower courts as requiring a mandatory exercise of jurisdiction over

these individuals. The two applicants for intervention, the Security Plan Office and William C. Earhart, individually and as administrator of the Security Plan Office, denied before the Labor Board that they were labor organizations (R. 13a, 18a, 21a, Transcript of Oral Argument before Board, pp. 14, 22). Nevertheless the opinion of this Court might easily be construed as treating them as a labor organization and subject to the mandatory jurisdiction of the Board. The requirements of Section 302(c)(5)(B) of the Labor Management Relations Act (29 U.S.C. 186(c)(5)(B)), that persons who assist trustees in administering health and welfare funds, be neutral, that is not affiliated with either employers or labor organizations, was never even called to the attention of this Court by counsel for the National Labor Relations Board. The Board itself had never found it necessary to pass on this issue as it had dismissed the cases on the broader ground that it would treat all the respondents as nonprofit organizations engaged in noncommercial enterprises over which the Board did not exercise jurisdiction.

Certainly the applicants for intervention, the Security Plan Office and William C. Earhart, must be allowed to intervene herein and present their contentions respecting Section 302(c)(5)(B) on the jurisdiction of the Board as to persons assisting in the administration of health and welfare funds under Section 302, as admittedly these persons were (R. 87a-88a, 230a-231a, Tr. 46, 56, 105, 108, 121-124, 362, G. C. Exh. No. 2).

In the petition for rehearing annexed hereto we set forth the extensive legislative history which supports the position of the other five applicants for interven-

tion that the Act is not applicable to their activities in employing personnel for the transaction of purely trade union functions. There is no indication in the opinion of the Court that those portions of the legislative history of the statute were considered by the Court. Certainly they were not brought to this Court's attention by the parties to this matter in either their briefs or oral argument.

Fairness and equity as well as traditional principles governing the intervention of parties require that the applicants for intervention be permitted to present their arguments on these issues to the Court by the same means, that is by both written brief and oral argument, as the countervailing arguments were presented.

We respectfully submit that some inadvertence with respect to either the adequacy of the Board's representation of the applicants' position or the effect which the decision of the issues would have on applicants' rights, must have occasioned the denial of the petition to intervene. A rehearing on the motion to intervene should be granted, leave to intervene should be ordered and the applicants for intervention should be permitted to file the annexed petition for rehearing on the

merits and participate in all further proceedings in this Court.

Respectfully submitted,

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**Petition for Rehearing of the Case
on the Merits**

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, C.I.O., its affiliated organizations involved herein, Oregon Teamsters' Security Plan Office, and William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each respectfully petitions that this Court grant rehearing of its order of May 6, 1957 reversing the judgment below and remanding the case to the Court of Appeals for the District of Columbia Circuit with directions to remand the same to the National Labor Relations Board for further proceedings.

REASONS FOR GRANTING REHEARING

1. By treating the Security Plan Office and William C. Earhart as Teamsters organizations when the Board expressly found they were not, the opinion of this Court may be construed as holding that persons engaged in determining the validity of claims against health and welfare funds are protected in the right to join a labor organization even though Section 302(c) (5)(B) of the Labor Management Relations Act (29 U.S.C. 186 (c)(5)(B)) requires they be neutral as respect either employer or union affiliation. The opinion of this Court repeatedly characterizes all the respondents before the Board as "teamster organizations" or as the "Teamster group." The opinion further states that the "Teamster group was composed of unions." Neither the Security Plan Office nor William C. Earhart, two of the respondents before the Board, is a labor organization. The ten employees here involved who work for the Security Plan Office

and Earhart are not employed either directly or indirectly by any labor organization. The petitioner herein has never so contended and neither the Board nor the Trial Examiner found them to be such. The Board and the Trial Examiner made separate findings as to the Security Plan Office and Earhart in recognition of the fact they were not labor organizations. For instance the Board showed it did not regard the Security Plan Office as a Teamster organization by stating (R. 231a):

“All of the tenants of this office building are exclusively Teamster organizations, except for Security Plan Office.”

Similarly the Board recited with approval that (R. 232a):

“the Trial Examiner found that all the Respondents except Security Plan Office were an integral part of a multi-state enterprise, consisting of the International and all its affiliates”

The Board's affirmative findings with respect to the Security Plan Office establish that it is not a labor organization. The Board found (230a-231a):

“Oregon Teamsters' Security Plan Office, hereinafter called Security Plan Office, which is the name assumed by an organization, consisting at the time of the hearing in this case of an administrator, Respondent Earhart, and a staff of office and clerical employees. With the aid of this staff, Earhart administers 18 trust funds established, pursuant to Section 302 of the Taft-Hartley Act, by collective bargaining agreements between various Teamster locals and employers in Oregon, Washington, Idaho and Montana. Under the applicable trust arrangements the administrator

of these funds is appointed by the trustees, half of whom are designated by Teamsters, the balance by the interested employers. With contributions to the trust funds furnished by the employers, the administrator purchases health and welfare insurance policies for the employee beneficiaries of the trusts, and his office processes and pays claims under these policies."

The record shows without the slightest dispute or qualification that the ten individuals employed by Earhart and the Security Plan Office are engaged in determining the validity of claims made by employees to health and welfare benefits (Tr. 121-123, 362).

The Board in dismissing the proceedings against Earhart and the Security Plan Office did not proceed on the ground that they were labor organizations and as such nonprofit organizations but rather made a finding that the Security Plan Office was also a nonprofit organization (R. 233a-234a).

In view of the importance which the complete neutrality of all who administer employee welfare trusts has assumed in recent months, we cannot believe this Court would wish to leave unclarified a decision which on its face plainly deals with such trusts but completely ignores the relevant legal considerations. Section 302 of the Labor Management Relations Act by subsections (a) and (b) makes it unlawful and by subsection (d) supplies criminal sanctions where money is paid or received in connection with such a trust unless all who assist the trustees in administering the trust are neutral as required by subsection (c)(5)(B). Any reading of the opinion of this Court as directing mandatory jurisdiction over trustees or administrators of trust funds would deprive the word "neutrality" in

subsection (c)(5)(B) of its usual meaning by compelling trustees and administrators to permit those who are required to be neutral as between employer and union to be at the same time members of unions.

2. This Court's analysis of the legislative history rests upon one committee statement which was made in 1934. The bill was not enacted in 1934. This committee report was never acted upon by Congress. The provision in question was withdrawn when the bill was introduced at the next session of Congress (Senate Comparison of S. 1958, 74th Cong., 1st Sess. with S. 2926, 73rd Cong., 2d Sess., as reported, p. 19, reprinted 1 Leg. His. N.L.R.A. 1935, p. 1342). When the bill was reported in 1935, a new narrower explanation of the parenthetical expression qualifying the exemption of labor unions appeared. This explanation can only be read as indicating Congressional intent to reach labor unions as employers only when they departed from traditional trade union activities (S. Rept. No. 573, on S. 1958, 74th Cong., 1st Sess., p. 6, reprinted 2 Leg. His. N.L.R.A. 1935, p. 2305).

Except for this one rejected committee statement in 1934 there is not another single item in the legislative history of either the Wagner or the Taft-Hartley Act which supports the construction adopted by this Court.

In the hearings preceding the enactment of the original National Labor Relations Act there was not a single witness who so much as suggested that employees of labor organizations as such should be protected in the right to self organization. The only concern for the right of employees of labor organizations was in instances where the labor organization did not function as a labor organization but rather as a busi-

ness enterprise. The only two witnesses who expressed the view that there were instances in which it might be desirable to protect employees of unions were Leslie Vickers and Dr. Gus W. Dyer. Both of these witnesses were concerned about unions going into business. Vickers stated (Hearings before the Senate Committee on Education and Labor on S. 2926, 73rd Cong., 2d Sess., p. 682, reprinted 1 Leg. His. N.L.R.A., 1935, p. 720) :

"The history of labor organizations becoming rich and powerful and entering into business is too recent to disregard in connection with this subject. * * * Under the exclusion as now contained in the bill, it is entirely conceivable that labor organizations in themselves will displace industrial organizations, and if and when they do they will not be required under the language of this exclusion to comply with the provisions of this act."

Dr. Dyer said (Hearings, *op. cit.*, p. 902, reprinted 1 Leg. His. N.L.R.A. 1935, p. 940) :

"Labor organizations may employ an unlimited number of workers to engage in all sorts of business activities. But they are not employers and those who work for them are not employees."

There is nothing in the testimony of Vickers or Dyer to show that they opposed the exclusion of labor organizations from the definition of employer in any instance where the labor organization restricted its activities to those traditional to trade unions.

In the years subsequent to the enactment of the Wagner Act and prior to the enactment of the Taft-Hartley Act the Wagner Act was uniformly characterized in Congress and elsewhere as a statute which

regulated only employers in the interest of employees and unions. Indeed, this Court may take judicial notice of the widespread criticism of the one-sided character of the Wagner Act because it did not regulate unions at all and that it was this criticism which resulted in the enactment of the Taft-Hartley Act.

The legislative history of the Taft-Hartley Act establishes that the unfair labor practices of labor organizations are specified in Section 8 (b) of the Act. The committee reports speak of the subjection of labor unions to unfair labor practice charges as new, H. Rept. No. 245, on H.R. 3020, 80th Cong., 1st Sess., p. 30, reprinted 1 Leg. His. L.M.R.A. 1947, p. 321; S. Rept. No. 105 on S. 1126, 80th Cong., 1st Sess., p. 21, reprinted 1 Leg. His. L.M.R.A. 1947, p. 427. The unfair labor practices proscribed in Section 8(b) are pertinent in relation to employees of other employers rather than in the context of their own ordinary employer-employee relations. Thus, for example in Section 8(b)(2), unions are prohibited from "causing or attempting to cause other employers" to discriminate against their employees, but unions are not forbidden to discriminate against their own employees. The specification in Section 8(b) of what are unfair labor practices by unions necessarily excludes others not mentioned, under well established principles of statutory construction.

3. The opinion of this Court may be read as requiring the National Labor Relations Board to assert jurisdiction over the respondents named in the complaints issued by the Board without leaving the Board discretion to decline for policy reasons to proceed in the instant cases. Assuming that the Board abused its discretion in categorizing all labor unions not engaged

in business enterprises as nonprofit charitable organizations and laying down a policy that it would not proceed against any nonprofit non-business enterprise, still there are many other relevant policy considerations which might properly motivate the Board to decline jurisdiction. The opinion of this Court points to nothing and we can think of nothing which makes the Board's jurisdiction over labor organizations more mandatory than its jurisdiction over any other employer. Unless this Court means that the Board can never decline jurisdiction over any employer the Board should have the same power to assess the relative impact on commerce of the unfair labor practices here charged which it exercises in all other cases.

CONCLUSION

For the foregoing reasons its is respectfully submitted that a rehearing of the case on the merits should be granted and that the case should be set down for reargument with the petitioners granted the status of full parties with the right to participate in oral argument.

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Certificate of Counsel

I hereby certify that each of the two foregoing petitions for rehearing is presented in good faith and not for delay.

Counsel for Petitioners